

ELECTRONICALLY FILED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title : Large-Scale, Fault-Tolerant Audio Conferencing In a Purely Packet-Switched Network

Inventors : Warren E. Baxley et al.

Serial No : 10/697,810 Docket : 199-0248US-C

Customer : 29855

Examiner : Redentor M. Pasia

Mail Stop AF
Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

This is a Pre-Appeal Brief Request for Review and is being filed concurrently with a Notice of Appeal. Reconsideration of pending claims 3-5, 7-10, 12-15 and 40 in the above-identified application is respectfully requested based on the following remarks.

Assignee provides comments regarding the Examiner's response to arguments in the Advisory Action mailed 28 September 2010 and then re-iterates previous arguments in summary with reference to Response to Final Office action filed 07 September 2010. These arguments clearly explain how the Examiner's reliance on Rosenberg is improper and why Rosenberg's "proxy server" cannot be reasonably or logically relied upon to disclose all elements recited for the claimed multipoint control unit (MCU).

1. Comments to Examiner's Response to Previous Arguments in Advisory Action

In response to previous arguments, the Examiner asserts three points. Firstly, the Examiner asserts that claim 40 does not require an MCU to support audio conferences between *three or more endpoints*. However, claim 40 clearly recites "an already active audio conference" and "adding the additional endpoint to the audio conference." Clearly, an already active audio conference has at least two participants and *adding an additional participant* certainly makes at least three. Therefore, the Examiner has incorrectly rebutted Assignee's arguments with respect to this point.

Secondly, the Examiner asserts “it is explicitly shown … that the use of INVITE messages/requests, in part, manages or prepares calls.” Advisory Action dated 28 September 2010 at p. 3 citing to Rosenberg at col. 3, lines 45-58. However, the management or preparation of calls is wholly different from the managing of an audio conference between three or more participants. As anyone of skill in the art is aware, a MCU performs functions above and beyond managing or preparing calls when performing the claimed function of managing an audio conference.

Thirdly, Assignee believed the Examiner had relied heavily on Rosenberg at col. 15-16 when forming his rejections. In the Advisory Action the Examiner has tried to “correct the Applicant in this notion” and explicitly states he has “relied heavily on Figures 3-4 and its corresponding description in col. 6.” Advisory Action dated 28 September 2010 at p. 4. In reply, Assignee thanks the Examiner for clarifying his rejections and explains that it is completely illogical for the Examiner to rely heavily on Figures 3-4 and its corresponding description because this portion of Rosenberg is in no way directed to an audio conference. Rosenberg at col. 6 is expressly dedicated to explaining an example of a *single user* calling another *single user*. “According to the illustrated example, user cz (110) wants to communicate with user henning (210).” Rosenberg at col. 6 lines 6-7.

Additionally, the Examiner asserts that “[h]aving a ‘new’ INVITE request denotes another call being placed by proxy server.” Advisory Action dated 28 September 2010 at p. 5. With this assertion the Examiner makes clear that his rejection cannot be sustained because the “new” invite request simply does not denote another call. The “new” invite request exemplifies the proxy server performing its standard function (as described in Rosenberg). Rosenberg discloses, “[i]n general, a proxy server receives a request (such as an INVITE message) and then *forwards* the request towards (i.e., not necessarily to) the current location of the callee.” Rosenberg at col. 5 lines 56-58 (emphasis added). The “new” invite request is simply a translated invite request being *forwarded* to server hgs@play because that is where the location server 230 resolved the location of user henning and returned that information to the proxy server. *See* Rosenberg at col. 6. lines 14-24. As explained above, Rosenberg at col. 5-6 is expressly directed to a *two party* call and the only portion of Rosenberg directed to multiparty conferencing is at col. 15-16. Because Rosenberg at col. 5-6 is directed to two party calling that portion of Rosenberg cannot be reasonably relied on (or heavily relied on) to support an

anticipation rejection of claim 40 which is expressly directed to a conference of at least 3 or more participants.

The Panel is reminded “[t]he identical invention must be shown *in as complete detail* as is contained in the ... claim.” M.P.E.P. § 2131 quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Furthermore, “[t]he elements **must be arranged** as required by the claim...” M.P.E.P. § 2131 quoting *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990) (emphasis added). Finally, “USPTO personnel may not dissect a claimed invention into discrete elements in isolation. Instead, the **claim as a whole** must be considered.” M.P.E.P. § 2106 II (C) (emphasis added). Because the Examiner’s reliance on Rosenberg’s proxy server cannot properly disclose the claimed MCU, the Examiner has failed to present a legitimate *prima facie* case of anticipation (regarding claim 40 when interpreted as a whole) as required by law and USPTO guidelines. Therefore, Assignee respectfully requests the Panel withdraw this rejection.

2. Section 102(b) Rejections

The Examiner has rejected independent claim 40 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,937,597 to Rosenberg et al. (“Rosenberg”). Final Office Action dated 07 July 2010 at p. 4. Assignee directs the Panel to Assignee’s Summary of Rosenberg in Response filed 07 September 2010 at pp. 10-12.

The Examiner’s assertion that Rosenberg’s “proxy server” anticipates the claimed “multipoint control unit” fails for at least the following reasons. The Examiner “notes that the claim limitation ‘multipoint control unit’ is rejected based on the presented functions performed by the claimed multipoint control unit. Details of the functions at least include ‘placing an outbound point to point call from the multipoint control unit to the additional endpoint’ as claimed.” Final Office Action dated 07 July 2010 at p. 2. However, the Examiner appears to fail to properly interpret the claim “as a whole” because, as recited in claim 40, “multipoint control unit [is] **managing** the audio conference.” It is not reasonable to assert Rosenberg’s “proxy server” manages the audio conference. Rosenberg expressly states “a proxy server receives a request (such as an Invite message) and then forwards the request towards (i.e., not necessarily to) the current location of the callee.” Rosenberg at col. 5 lines 56-58. In other words, Rosenberg’s proxy server is used to **determine locations** and not manage audio conferences. Even if one

were to accept the Examiner's interpretation that Rosenberg's "proxy server" actually places an outbound call, the Examiner's assertion that Rosenberg's "proxy server" can anticipate the claimed "multipoint control unit" fails when claim 40 is properly interpreted as a whole. For at least this reason, this is clearly not a sustainable rejection, Rosenberg does not disclose anything *arranged* as in independent claim 40 nor does Rosenberg disclose the identical invention in *complete detail* as required by law and USPTO examining guidelines. If necessary, please see Assignee's further Remarks in Response filed 07 September 2010 at pp. 12-14.

3. Section 103(a) Rejections

The Examiner has rejected independent claim 7 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent 5,995,608 to Detamble, Jr. et al. ("Detamble") in view of Rosenberg. Final Office Action dated 07 July 2010 at p. 6. Additionally, the Examiner has rejected dependent claims 3-5, 8-10 and 12-15 as allegedly being obvious over Detamble in view of Rosenberg and various other secondary references.

Regarding independent claim 7, the Examiner again relies on Rosenberg to show "initiating an outbound call request from said multipoint control unit" and equates Rosenberg's proxy server with the claimed multipoint control unit. However, as shown above with respect to independent claim 40, Rosenberg in no way discloses initiating an outbound call request from a multipoint control unit which is also managing the audio conference. Rosenberg's proxy server cannot be equated with a multipoint control unit and even if one were to assume Rosenberg's proxy server could be equated to a multipoint control unit (which it cannot) it is not Rosenberg's proxy server that *both manages* the audio conference and *initiates an outbound call* because Rosenberg's proxy server functions to locate "callees" (*i.e.*, addresses that have been called) and in the specific bridged example (described in Rosenberg at col. 15-16), the proxy server is attempting to locate a callee that has *already been called* (details explained in Assignee's further Remarks in Response filed 07 September 2010 at pp. 12-14). For at least these reasons, the Examiner's reliance on Rosenberg is inaccurate. Detamble, either alone or in combination with Rosenberg, does not disclose each and every element of independent claim 7. Accordingly, the Examiner has failed to present a legitimate *prima facie* case of obviousness as required by law and established Patent Office Procedure. Therefore, Assignee respectfully requests the Panel

withdraw the rejection of independent claim 7 and all claims 3-5, 8-10 and 12-15 which depend from claim 7.

C. Conclusion

Assignee submits, based on the above comments and referenced previously filed Remarks; the Examiner has failed to establish a legitimate *prima facie* case of either anticipation or obviousness as required by law and established Patent Office Procedure. Accordingly, Assignee requests the Panel withdraw the Examiner's rejections and allow all pending claims to issue.

Respectfully submitted,

/William M. Hubbard/

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 199-0248USC	
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		First Named Inventor Warren E. Baxley, et al.	
		Art Unit 2474	Examiner Redentor M Pasia

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
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/William Hubbard/

Signature

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832-446-2400

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October 7, 2010

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